IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 11.04.2005

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.K.KRISHNAN

H.C.P. No.1280 of 2004

M.R.Shajathi Begum ... Petitioner

vs.

1. State of Tamilnadu
Rep. by Secretary to Government,
Public (S.C.) Dept.,
Fort St. George,
Chennai 600 009.

2. Union of India,
Rep. by Secretary to Government,
Ministry of Finance
department Of Revenue,
New Delhi. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a writ of habeas corpus to call for the records of the 1st respondent made in G.O. no.SR.1/1228-4/2004 dated 13.10.2004 and quash the same and set at liberty the detenu M.K.S.Mohammed Rafi son of Mohammed Sultan.

For Petitioner : Mr.B.Kumar, Senior Counsel
for Mr.R.Loganthan

For R-1 : Mr.A.Kandasamy
Additional Public Prosecutor.

For R-2 : Mrs.Vanathi Srinivasan,
Addl. Central Govt. Standing Counsel

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O R D E R

(Order of the Court was made by P.SATHASIVAM, J.)

One M.R.Shajathi Begum, wife of the detenu by name M.K.S.Mohamed Rafi, challenges the detention order dated 13.10.2004, passed by the first respondent herein under Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 1974).

2. Heard learned Senior Counsel for petitioner, learned Additional Public Prosecutor for R-1 and learned Additional Central Government Standing Counsel for R-2.

3. Though several points have been raised questioning the order of detention, at the foremost, Mr.B.Kumar, learned Senior Counsel appearing for the Petitioner, projected before us that though the Detaining Authority was aware of the filing of bail petition on 02.10.2004 and the contents therein, failed to take into consideration the order of dismissal of the bail petition dated 11.10.2004, which vitiates the subjective satisfaction arrived at by the Detaining Authority.

4. In this regard, it is relevant to refer to the averments made in the grounds of detention, viz., Paragraph No.1(ix), which reads as under:-

> " A bail petition dated 2.10.2004 was filed on your behalf before the ACMM, E.O.I, Egmore, Chennai stating inter alia that you were innocent, that you did not commit any offence as alleged and that you were an Income Tax assessee"

It is clear that the Detaining Authority was aware of the filing of bail petition dated 2.10.2004 before the court concerned and also the contents of the same. It is also useful to refer to Paragraph No.5 of the grounds of detention, which reads as under:-

> " The State Government are also aware of the fact that you are in the Central Prison, Chennai as remand prisoner; that the said judicial remand is only for the period specified in law; that there is likelihood of you being released on bail or statutory bail. ..."

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The above reference makes it clear that there is likelihood of the detenu being released on bail or securing statutory bail after sometime. It is brought to our notice that even as early as on 11.10.2004, the said bail petition came to be dismissed, however, this was not referred to in the grounds of detention. A perusal of the order dated 11.10.2004 shows that the said petition came to be dismissed in the presence of the A.P.P. Though the learned Additional Public Prosecutor contended that the bail petition came to be dismissed as the petitioner himself not pressed the same and that the order was not passed in the presence of the A.P.P., on going through the order of the learned Additional Chief Metropolitan Magistrate (Economic Offences-I), Egmore, Chennai-8, dated 11.10.2004, we are satisfied that the said order was passed on that day in the presence of the petitioner and the A.P.P. as well. In this regard, it is useful to refer to the decision rendered by a Division Bench of this Court (to which one of us was a party (PSJ)) dated 30.3.2004, made in HCP No.1495 of 2003, wherein, while considering similar contention, after referring to the Judgment of the Supreme Court in ABDUL SATHAR IBRAHIM MANICK vs. UNION OF INDIA (1992 (1) SCC page 1), the Division Bench has held in paragraph No.4 as follows:-

> " ... The learned Additional Public Prosecutor relied upon the judgment of the Apex Court reported in ABDUL SATHAR IBRAHIM MANICK VS UNION OF INDIA (1992(1) SCC 1) wherein it was held that non supply of copy of dismissal order of the bail application is not a ground for vitiating the order of detention. The learned counsel for the detenu was not harping on that point. What he has argued was regarding the combined reading of para 5 and para 1(ix) of the grounds of detention, whereby it is learnt that even though the Detaining Authority was aware of the fact of detenu being in custody, it was stated in the grounds of detention that there was likelihood of he being released on bail. The very term that the detenu is likely to be released on bail would go to show that either pendency of the bail application or possibility of filing of another bail application. Unless the Detaining Authority shows that bail application was already dismissed, he will not be right in saying that there is likelihood of the detenu being released on bail. From the above term what is understandable is that the

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detenu is likely to file another bail application and get himself released. Although in the above case law viz., 1992(1) SCC Page 1, it was said that non supply of dismissal order of bail application is not a ground for vitiating the order of detention, even in that judgment it was observed that awareness of the Detaining Authority about the fact of detenu being in custody should necessarily be there. Awareness should be understandable only if it is made known to the Detaining Authority as to what order has been passed in the bail application. Unless this is made known, there can be no awareness of the fact of detenu being in custody. Inasmuch as the result of bail application was not at all made known to the Detaining Authority as seen from the grounds of detention, there arises a question of non application of mind and subjective satisfaction of the Detaining Authority. We are of the view that the Detaining Authority has not properly applied his mind in this connection and therefore, the detention order gets vitiated. In view of the above, we are not inclined to go to the other points raised by the learned counsel for the detenu."

5. On going through the factual details in that case and the case on hand, we are of the view that the said decision is directly on the point and we make it clear that it is not our view that the Detaining Authority is to refer to the dismissal of the bail petition, however, as pointed out in the said decision, the awareness of the Detaining Authority about the fact of detenu being in custody should necessarily be there and awareness should be understandable only if it is made known to the Detaining Authority as to what order has been passed in the bail application. Inasmuch as the result of bail application was not at all made known to the Detaining authority, as seen from the grounds of detention, there arises a question of non-application of mind and subjective satisfaction of the Detaining Authority.

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6. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith from the custody unless he is required in some other case or cause.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

JI.

To

1.The Secretary to the Government,
Public (S.C.) Dept.,
Fort St. George,
Chennai 600 009.

2.The Secretary to the Government,
Ministry of Finance,
Department of Revenue,
New Delhi.

3.The Superintendent,
Central Prison,
Chennai

4.The Joint Secretary to Government,
Public (law and order)
fort st.george,
Chennai-9

5.The Public Prosecutor,
High Court,
Chennai.

+1cc to Mrs. Vanathi Srinivasan,Advocate Sr.No.17343

+1cc to Mr.R.Loganathan,Advocate Sr.No.17141

TEJ(CO)
kaa 18.04.

HCP. No.1280 of 2004.

11.04.2005.

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